

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

MARILYN CASTILLO, §
MELANIE MELENDEZ, and all others §
similarly situated under 29 USC § 216(b), §
§
Plaintiffs, § CASE NO. 7:23-CV-00168
§
v. §
§
HANDS OF COMPASSION HOME CARE, LLC, §
§
Defendant. §

**PLAINTIFF'S DESIGNATION OF
EXPERT WITNESSES UNDER RULE 26(a)(2)(B)**

Pursuant to Fed. R. Civ. P. 26(a)(2)(B), Plaintiffs Marilyn Castillo, Melanie Melendez, Brittany Nicole Armendariz, and Esmeralda Abalos serve their Designation of Expert Witnesses and makes the following disclosures:

I.

Fernando M. Bustos
Matthew N. Zimmerman
Brandon C. Callahan
BUSTOS LAW FIRM, P.C.
1001 Main Street, Suite 501
Lubbock, Texas 79401
(806) 780-3976

Mr. Bustos, Mr. Zimmerman, and Mr. Callahan are attorneys licensed to practice in state and federal courts in Texas and New Mexico and will testify regarding the subject of attorneys' fees. They may testify generally regarding their experience representing clients in civil litigation matters, such as this case. They are familiar with the reasonable and customary fees charged by attorneys in the West Texas area, and the reasonable and necessary charges for legal services rendered in cases similar to this lawsuit, and that the attorneys' fees and charges incurred in this case are reasonable and necessary on behalf of Plaintiffs. They are further expected to provide testimony with regard to the performance of legal services rendered on behalf of Defendant, and reasonable and necessary attorneys' fees incurred in this lawsuit. Redacted attorneys' fees statements will also be produced.

The basis for the impressions and opinions of Mr. Bustos, Mr. Zimmerman, and Mr. Callahan consists of the facts shown by and/or contained in:

- a. The discovery taken in this case, including any exhibits;
- b. Any expert reports;
- c. All witness statements that are produced in this case;
- d. Pleadings on file in this case;
- e. Redacted attorneys' fee statements;
- f. All documents and tangible things produced in this case, including by any other party; and
- g. Such other witnesses as developed through discovery, and any expert witness disclosed by any other party.

II.

In compliance with Rule 26, attached are the following:

- Exhibit "A" Curriculum Vitae of Fernando M. Bustos;
- Exhibit "B" Curriculum Vitae of Matthew N. Zimmerman; and
- Exhibit "C" Curriculum Vitae of Brandon C. Callahan.

III.

Plaintiffs Marilyn Castillo, Melanie Melendez, Brittany Nicole Armendariz, and Esmeralda Abalos reserve the right to use additional expert witnesses for rebuttal and any expert witness designated by any other party.

Respectfully submitted,

By: /s/ Fernando M. Bustos

Fernando M. Bustos; SBN: 24001819

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Matthew N. Zimmerman; SBN: 24100386

mzimmerman@bustoslawfirm.com

Brandon C. Callahan; SBN: 24096175

bcallahan@bustoslawfirm.com

BUSTOS LAW FIRM, P.C.

P.O. Box 1980

Lubbock, Texas 79408-1980

Telephone: (806) 780-3976

Facsimile: (806) 780-3800

*Counsel for Plaintiffs Marilyn Castillo,
Melanie Melendez, Brittany Nicole
Armendariz, and Esmeralda Abalos*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was served on all counsel of record on the date of filing with the U.S. District Court, Western District of Texas, through the Court's electronic filing system (ECF).

/s/ Fernando M. Bustos

FERNANDO MANUEL BUSTOS
BUSTOS LAW FIRM, P.C.
P.O. BOX 1980
LUBBOCK, TEXAS 79408-1980
(806) 780-3976
FAX (806) 780-3800

Exhibit A

**PROFESSIONAL
EXPERIENCE**

Principal, BUSTOS LAW FIRM, P.C., Lubbock, Texas

(2010 - present)

- Principal practice areas: Federal litigation, including commercial, intellectual property, employment and civil rights litigation and appeals

Partner, MCCLESKEY, HARRIGER, BRAZILL & GRAF, L.L.P., Lubbock, Texas

(2002-2010)

Adjunct Professor of Law, TEXAS TECH UNIVERSITY SCHOOL OF LAW, Lubbock, Texas (2000-2013)

Taught courses on:

- Civil Rights Law
- Interviewing, Counseling & Negotiation

Associate, MCCLESKEY, HARRIGER, BRAZILL & GRAF, L.L.P., Lubbock, Texas

(2002-2010)

Briefing Attorney, HONORABLE SAM R. CUMMINGS,
United States District Judge for the Northern District of Texas, Lubbock,
Texas
(1997-1999)

**BAR
ADMISSIONS**

Supreme Court of the United States (2001)

United States Court of Appeals for the Fifth Circuit (1999)

United States Tax Court (2006)

United States District Court for the Northern District of Texas (1998)

United States District Court for the Southern District of Texas (1998)

United States District Court for the Eastern District of Texas (1998)

United States District Court for the Western District of Texas (1998)

United States District Court of New Mexico (2016)

United States District Court for the Eastern District of Michigan (2017)

Texas (1997)

New Mexico (2018)

PROFESSIONAL ACTIVITIES

Chairman, United States Magistrate Judge Selection Panel, Northern District of Texas (2016)

Chairman, Federal Court Advisory Committee, United States District Court for the Northern District of Texas (2009-2011). **Member** (2006-2008).

Member, Magistrate Judge Merit Selection Panel for the Reappointment of United States Magistrate Judge Nancy M. Koenig (2006)

Director, Lubbock County Bar Association (2004-2007)

Treasurer, Lubbock County Republican Party (2006-2008)

AV Rated by Martindale-Hubbell

Professional Organization Memberships

American Bar Association

American Board of Trial Advocates (President, Lubbock Chapter, 2019)

Bar Association for the Fifth Federal Circuit

Federalist Society

Lubbock County Bar Association

EDUCATION

Doctor of Jurisprudence, TEXAS TECH UNIVERSITY SCHOOL OF LAW, Lubbock, Texas (1997)

- Full Scholarship Recipient (Texas Tech University Board of Regents' Scholarship)
- 1996 State Moot Court Team Member

Bachelor of Arts, BRIGHAM YOUNG UNIVERSITY, Kennedy School of International Studies, Provo, Utah (1994)

- Major: International Relations
- Minor: Spanish

FOREIGN LANGUAGES

Spanish

PUBLICATIONS

Fifth Circuit Survey – Civil Rights Law, 39 TEX. TECH L. REV. 719 (2007)

Fifth Circuit Survey – Civil Rights Law, 38 TEX. TECH L. REV. 743 (2006)

Fifth Circuit Survey – Civil Rights Law, 33 TEX. TECH L. REV. 755 (2002)

**SAMPLE
LITIGATION
EXPERIENCE**

Victory before the Amarillo Court of Appeals on mandamus in case of first impression construing insured's duties under Section 5421A.003 of the Texas Insurance Code.

Obtained a judgment on the pleadings for the City of Lubbock in federal court against a suit for violations of the Texas Open Meetings Act.

Obtained a dismissal in federal court under the Texas Anti-SLAPP Act against counterclaims for defamation, business disparagement, tortious interference with existing contracts, and tortious interference with prospective relations.

Successfully collected on a \$350,000 judgment in federal court.

Obtained a multi-million-dollar pre-suit settlement for two physicians in a local medical practice who were defrauded by their managing partner.

Victory before the Texas Seventh Court of Appeals in Amarillo, holding that speech on the subject of tenure for professors in higher education is a matter of public concern, entitled to protection, earning Mr. Bustos the honor of "Appellate Lawyer of the Week" by Texas Lawyer Magazine.

Successful settlement of multiple overtime class action lawsuits in federal court in New Mexico, saving oil and gas business clients millions of dollars in claimed overtime.

Federal Fifth Circuit Court of Appeals victory, holding that the subject of tenure is a protected matter of public concern for free speech purposes, and reversing and remanding a business school professor's claim for retaliation in violation of his First Amendment free speech rights.

Successfully defeated post-judgment attorneys' fees request in federal court against limited liability company.

Co-counsel in obtaining permanent nationwide injunction against the U.S. Department of Labor's new "Persuader Rule," which restricted the Labor Management Relations Act's advice exemption.

Defended a large regional oil and gas services company against the U.S. Department of Labor's overtime action, saving the client approximately \$1 million in penalties and claimed wages.

Six figure securities fraud federal court jury verdict, including punitive damages, against two investment firms and two brokers.

Co-lead counsel for over 200 farmers who successfully filed involuntary bankruptcy petition against an agricultural processing plant and brokered a settlement involving over \$25 million in claims.

Obtained over \$4 million dollars in securities fraud judgments against international money launderers in Lubbock federal district court; judgments against primary defendants affirmed by the Fifth Circuit Court of Appeals.

Successfully defended two class action lawsuits in San Antonio federal district court under the Electronic Fund Transfer Act. Cases were voluntarily dismissed without any payment to Plaintiffs after a challenge to class certification.

Co-counsel in a case representing 38 Lubbock-area homeowners who brought suit against the manufacturer and distributor of Kitec® residential pipe. Defendants removed the case to federal court. After successfully remanding the case back to state court, the case was resolved to the homeowners' satisfaction under a confidential settlement agreement.

Receiver in action brought by SEC arising from investor fraud involving over 250 investor victims and approximately \$45 million in losses. Operate four restaurant chains and a tennis club as part of estate operations.

Obtained dismissal of lawsuit alleging a breach of a covenant not to compete and non-solicitation agreement. The lawsuit was dismissed before it was even served upon our client, after we submitted briefing to the court showing that under Texas law, the former employer could not prove a case for breach of a covenant not to compete or non-solicitation agreement.

Secured a six-figure award after a four-day arbitration hearing for a large regional health care employer in a case involving breach of a non-compete agreement.

Obtained permanent injunction in trademark infringement case.

Obtained a \$150 million judgment in state district court in an investment fraud case.

Served as hearing officer and final decision-maker for City of Lubbock in evidentiary hearing for dismissed city council chief of staff who claimed First Amendment retaliation and race discrimination claims.

Dismissed with prejudice a case of first impression alleging violation of the Fair Labor Standards Act claiming “expediters” at high-end restaurant could not lawfully participate in a tip pool. The federal district court denied

plaintiff's motion for collective (class) action certification, and opined that plaintiff's case would fail on the merits.

Obtained a quarter-million-dollar summary judgment for plaintiff in a commercial litigation matter in Lubbock federal district court based on breach of brokerage contract.

Receiver in Lubbock federal district court which included satellite litigation in that court and San Antonio bankruptcy court, plus managing 20 property interests, including a business generating gross revenue of approximately \$4 million per year.

Successfully defended a claim under the Americans With Disabilities Act for a large regional employer, obtaining summary judgment in federal district court which was affirmed by the Fifth Circuit Court of Appeals.

Co-litigation counsel in \$60 million declaratory judgment action for a multi-national company, in Lubbock, Texas federal court, and in 10 separate state court lawsuits. Argued all hearings in federal and state trial courts. Defeated a motion to dismiss the federal declaratory judgment action, and obtained summary judgment in same court on federal preemption and UCC limitation of remedies issues. Assisted in winning case on appeal to the Fifth Circuit, and assisted in preparation for argument at United States Supreme Court.

Served as co-counsel in \$1 billion patent ownership lawsuit in Lubbock, Texas federal court. Defeated a motion to dismiss, and the case was successfully settled for the client.

Represented nationwide retailer in a commercial litigation jury trial in Lubbock County district court, and obtained a favorable verdict and successfully defended the judgment on appeal.

**SPEAKING
ENGAGEMENTS**

Voir Dire
American Board of Trial Advocates - Texas Chapter
September 13, 2022, Lubbock, Texas
.5-hour seminar

The Seventh Amendment Right to a Jury Trial and Legal News You Can Use
American Board of Trial Advocates
October 24, 2019, Lubbock, Texas
Academic First Amendment Issues
.5-hour seminar/Paper presented

Firearms Seminar
Amarillo Bar Association
April 19, 2013, Amarillo, Texas
Constitutional Law/Second Amendment
.5-hour seminar/Paper presented

35th Annual Advanced Civil Trial Course
State Bar of Texas
August 24, 2012, Dallas, Texas, & October 19, 2012, Houston, Texas
Federal Law Update
.5-hour seminar/Paper presented

Demystifying the Fifth Circuit and Federal Practice
Bar Association of the Fifth Federal Circuit
September 24, 2010, Lubbock, Texas
1-hour seminar

17th Annual Advanced Evidence and Discovery Course
State Bar of Texas
April 29, 2004, Houston, Texas
“Cookin’ With HB 4”
.5-hour seminar/Paper presented

2001 Suing and Defending Governmental Entities MCLE Course
State Bar of Texas
July 26-27, 2001, San Antonio, Texas
“Making A Federal Case of It: Pleadings in Federal Court”
.5-hour seminar/Paper presented

PROFESSIONAL AWARDS

2016 Lubbock Business Person of the Year – Lubbock Chamber of Commerce
2014-2021 Texas Monthly “Super Lawyer”
2005-2011 Texas Monthly “Texas Rising Star” Attorney
Lubbock County Outstanding Young Lawyer 2003-2004
Lubbock Magazine Top Attorney 2019

PUBLISHED CASES

In re Westchester Surplus Lines Ins. Co., No. 07-22-00329-CV, ___ S.W.3d ___, 2023 WL 4488269 (Tex. App.—Amarillo Jul. 10, 2023) (orig. proceeding) (case of first impression for Texas appellate courts clarifying insured’s duties under Section 542A.003 of Texas Insurance Code and holding insured’s notice was defective and abating case).

Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 53 F.4th 869, No. 22-10387, 2022 WL 17075011 (5th Cir. Nov. 18, 2022) (successfully challenged the constitutionality of the Horseracing Integrity and Safety

Act's delegation of congressional authority to a private entity in violation of the non-delegation doctrine).

In re Gilbreath, No. 07-20-00244-CV, 2021 WL 450970 (Tex. App.—Amarillo Feb. 8, 2021, orig. proceeding.) (obtained mandamus relief vacating an order granting death penalty sanctions.)

Wagner v. FedEx Freight, Inc., No. 5:17-CV-264-M-BQ, 2018 U.S. Dist. LEXIS 80264 (Apr. 17, 2018) (denying plaintiff's motion to remand and holding that claim for wrongful death against Texas worker's compensation subscriber did not fall under prohibition against removal to federal court).

Wetherbe v. Goebel, No. 07-16-00179-CV, 2018 Tex. App. LEXIS 1676 (Tex. App. – Amarillo, Mar. 6, 2018) (topic of tenure in higher education is protected matter of public concern in Texas under free speech clause of Constitution).

Wetherbe v. Tex. Tech Univ. Sys., 699 F. App'x 297 (5th Cir. 2017) (topic of tenure in higher education is a protected matter of public concern under First Amendment's free speech clause).

Nat'l Fed. Of Indep. Bus. v. Perez, ___ F.Supp. 3d ___, No. 5:16-CV-00066-C, 2016 U.S. Dist., LEXIS 89694 (N.D. Tex. June 27, 2016) (entering nationwide preliminary injunction against U.S. Department of Labor's new Persuader Rule, which restricted the advice exemption under the Labor Management Relations Act for violating the First and Fifth Amendments).

Venture Cotton Cooperative et al. v. Freeman, et al., 435 S.W.3d 222 (Tex. 2014) (rights under Texas Deceptive Trade Practices Act not waived by agreement to arbitrate under American Cotton Shippers' Association rules).

Teague v. Norcold, Inc., 774 F. Supp. 2d 817 (N.D. Tex. 2011) (defeated defendant's motion to dismiss in products liability case under Texas economic loss doctrine).

Lentz v. Spanky's Restaurant II, Ltd., d/b/a Double Nickel Steakhouse, 491 F. Supp. 2d 661 (N.D. Tex. 2007) (case of first impression denying plaintiff's motion for collective (class) action certification and opining no violation of the Fair Labor Standards Act where Plaintiff claimed "expediters" at a high-end restaurant could not lawfully participate in a tip pool).

Wamco XXVIII, Ltd. v. Casa Grande Cotton Finance Co.; Chickasaw Cotton Oil Co. and Michael D. Hicks, Substitute Trustee, 314 F. Supp. 2d 655 (N.D. Tex. 2004) (case of first impression interpreting Texas Property Code provision related to substitute trustees).

Dow AgroSciences LLC v. Bates, et al., 205 F. Supp. 2d 623 (N.D. Tex. 2002) (order granting summary judgment based on federal preemption and UCC limitation of remedies).

Galindo v. Dean, 69 S.W.3d 623 (Tex. App.— Eastland, 2002, no pet.) (affirming summary judgment in medical malpractice case on basis of suicide affirmative defense statute).

Williams v. Viswanathan, 65 S.W.3d 685 (Tex. App. — Amarillo, 2001, no. pet.) (brief author) (overruling opposing party's motion to recuse court of appeals justice).

Williams v. Viswanathan, 64 S.W.3d 624 (Tex. App. — Amarillo, 2001, no. pet.) (brief author) (affirming jury verdict in malpractice case dealing with jury misconduct issues).

Nutrition Physiology Corp. v. Enviro Corp., 87 F. Supp.2d 648 (N.D. Tex. 2000) (granting motion to dismiss for want of personal jurisdiction in international intellectual property case).

**EXPERT
WITNESS**

ENGAGEMENTS

Jose Miguel Guemez v. Charles Hodges, et al; No. 017-233898-08; In the 17th District Court of Tarrant County, Texas. Retained by plaintiff. Written report issued, testified at trial August 24, 2011, on standard of care for receivers.

Matthew Zimmerman

BUSTOS LAW FIRM, P.C.
1001 Main Street, Suite 501
Lubbock, Texas, 79401

Exhibit B

(806) 780-3976

mzimmerman@bustoslawfirm.com

EDUCATION

Texas Tech University School of Law, Lubbock, Texas
Doctor of Jurisprudence
Magna Cum Laude

November 2016

Brigham Young University, Provo, Utah
Bachelor of Business Administration—Finance

December 2009

EXPERIENCE

Bustos Law Firm, P.C., Lubbock, Texas
Associate
Law Clerk

November 2016 – Present

May 2014 – November 2016

**ADMITTED TO PRACTICE IN THE
FOLLOWING STATES AND COURTS:**

Texas (2016)
United States District Court for the Northern District of Texas (2016)
United States District Court of New Mexico (2016)
New Mexico (2017)
United States District Court for the Western District of Texas (2017)
United States Court of Appeals, Fifth Circuit, (2017)

**PROFESSIONAL ACTIVITIES
AND MEMBERSHIPS:**

Lubbock County Bar Association
Lubbock County Young Lawyers Association
Member of the Chamber of Commerce Leadership Lubbock Class (2017)

**SAMPLE
LITIGATION
EXPERIENCE**

- (2021) Week-long jury trial for a partnership dispute.
- (2021) Successfully recovered lost wages for a large group of employees.
- (2019) Obtained a judgment on the pleadings for the City of Lubbock in federal court against a suit for violations of the Texas Open Meetings Act.
- (2019) Obtained a dismissal in federal court under the Texas Anti-SLAPP Act against counterclaims for defamation, business disparagement, tortious interference with existing contracts, and tortious interference with prospective relations.
- (2018) Successfully collected on a \$350,000 judgment in federal court.
- (2017) Successful settlement of multiple overtime class action lawsuits in federal court in New Mexico, saving oil and gas business clients millions of dollars in claimed overtime.

**PUBLISHED
CASES**

Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 53 F.4th 869, No. 22-10387, 2022 WL 17075011 (5th Cir. Nov. 18, 2022) (successfully challenged the constitutionality of the Horseracing Integrity and Safety Act's delegation of congressional authority to a private entity in violation of the non-delegation doctrine).

Pickle v. Universal Cable Holdings, Inc., 534 F.Supp.3d 663 (N.D. Tex. 2021)

Planned Parenthood of Greater Texas Surgical Health Services v. City of Lubbock, Texas, 542 F.Supp.3d 465 (N.D. Tex. 2021)

Raider Ranch, LP v. Lugano, Ltd., 579 S.W.3d 131 (Tex. App. – Amarillo 2019, no pet.) (successfully preserved three limited partners' right to inspect the books and records of a limited partnership by defeating a Rule 91a motion to dismiss and prevailing on the merits of their declaratory judgment action)

Wagner v. FedEx Freight, Inc., 315 F. Supp. 3d 916 (N.D. Tex. 2018) (successfully removed claim to federal court where gross negligence claim did not arise under Texas Workers' Compensation Act for purposes of statute prohibiting removal of action if claim arose under state workers' compensation law)

Siwell, Inc. v. Leverage Fin., LLC, No. 5:12-CV-185-D, 2017 U. S. Dist. Lexis 59149 (N.D. Tex. 2017) (defeated defendant's motion for attorney fees award against a Texas limited liability company).

Wetherbe v. Texas Tech University System, 699 Fed. Appx 297 (Tex. App – Fifth Circuit 2017)

BRANDON C. CALLAHAN
BUSTOS LAW FIRM, P.C.
POST OFFICE BOX 1980
LUBBOCK, TEXAS 79408-1980
(806) 780-3976
FAX (806) 780-3800

Exhibit C

PROFESSIONAL EXPERIENCE

- | | |
|--|--------------------------|
| Bustos Law Firm, P.C.
<i>Associate</i> | August 2018 — Present |
| • Principal practice areas: Federal litigation, including commercial, intellectual property, employment and civil rights litigation and appeals | |
| Craig, Terrill, Hale, & Grantham, Lubbock, Texas
<i>Law Clerk</i> | August 2017 — April 2018 |
| • Researched and prepared memoranda of law on issues including business entities, evidence, personal injury, insurance, trademarks, contracts, banking, and real estate. | |
| • Analyzed and researched legal documents including real estate deeds utilizing property lot and block descriptions. | |
| • Drafted motions to dismiss and to transfer venue. | |
| • Drafted motion for summary judgment. | |
| McCleskey, Harriger, Brazill & Graf, Lubbock, Texas
<i>Law Clerk</i> | Summer 2017 |
| • Researched and prepared memoranda of law on issues including secured transactions, discovery, contract law, wills and trust, and family law. | |
| • Attended depositions in workplace injury and fraud cases. | |
| • Attended pre-trial conferences and court proceedings. | |
| • Drafted petition for case involving multiple fraud and breach of contract claims. | |
| • Drafted lease agreement for dental practice. | |
| 237 th Judicial District Court, Judge Les Hatch, Lubbock, Texas
<i>Law Clerk</i> | Summer 2016 |
| • Researched and prepared memoranda of law on issues including non-compete agreements, bills of review, family law, and tort law. | |
| • Observed civil and criminal trials and other court proceedings. | |
| McWhorter, Cobb, & Johnson, Lubbock, Texas
<i>Law Clerk</i> | Summer 2016, 2017 |
| • Researched and prepared memoranda of law on issues including health care liability claims, wills and trusts, child support, employment law, and property owner association bylaws. | |
| • Assisted in drafting deed restrictions for property owner association. | |

- Attended multiple client meetings regarding property disputes and property owner associations. May 2018

EDUCATION

Texas Tech University School of Law, Lubbock, Texas Doctor of Jurisprudence	April 2013
Brigham Young University Idaho, Rexburg, Idaho Bachelor of Business Management in Finance Minor in Portuguese	2007—2009

VOLUNTEER EXPERIENCE

Brazil Rio de Janeiro Mission

Full-time Church Volunteer

- Organized and presented training workshops to local and foreign volunteers on goal setting, relationship building, and leadership skills (in Portuguese).
- Taught English as a second language to Brazilians on a weekly basis.

LANGUAGES

Fluent in Portuguese (Reading, Writing and Speaking)